

Behind the Consular Curtain

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Providing global mobility & visa services via ABIL and ABIL Global with 1,500 professionals, spanning over 100 countries.

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- Partner at Wolfsdorf Rosenthal LLP
- Loyola Law School, J.D. (1992 – 1995)
- U.S. News – Best Lawyers Los Angeles Immigration Law “Lawyer of the Year” 2014 & 2015
- The Southern California Super Lawyers (2010 – 2014)
- Who’s Who of Corporate Immigration Lawyers “expert on consular issues”
- Who’s Who Legal “excellent in-person attorney/client representation at U.S. consular posts”

Today's Agenda

- Visa Interview Overview
- 2020 Hot Topics:
 - Administrative Processing
 - Consular Services Availability
 - Travel Restriction Proclamations & Quarantines
 - H-1B Proclamation & National Interest Exception (NIE)
- Visa Renewal Issues
- Visa Revocations
- Questions and Answers

Anatomy of a Visa Interview



2-minute interview:

- Review application (DS-160)
- Interview applicant – keep answers short & simple
- Security checks
- Case notes
- Document review is optional
- 214(b) factors
- Consular officers perceive that they are lied to frequently – immaterial “white lies” will likely result in a denial

BOTTOM LINE: Each application for a nonimmigrant visa is a detailed exploration of the individual's entitlement to admission to the U.S. in a particular nonimmigrant category, even if a renewal

2020 Hot Topics

Administrative Processing

- Includes several types of “checks”:
 - Additional documents needed from applicant (simplest to resolve:)
 - Fraud Investigation
 - AOs (Advisory Opinion)
 - SAOs (Security Advisory Opinions)
- SAO’s and requests for criminal records are ordered by consular officers on a wide variety of applicants:
 - The person’s activity in the U.S. might pose a security risk (sensitive technologies).
 - The person has a common name, or name which may be transliterated in a number of ways (eg. Mohamed Ali).
 - The person is a national or native of a country which poses a security issue (eg. China, Israel, Iran, Syria, Russia).
 - The person has any criminal history.
 - The person has a history of alcohol or drug abuse.
- Checks can take anywhere from a few days to months to years to resolve.
- Very difficult to expedite or resolve unless the person is “high profile”.
- Congressional assistance sometimes is helpful.
- Can also consider a Mandamus Lawsuit.

Consular Services Availability

- Posts slowly resuming operations but still remain largely closed to “routine” visa services
 - very limited appointment availability
- Appointments are often cancelled
 - Increased wait times (summer 2021)
 - Limited services due to staff cuts and appointment backlogs
- Students, healthcare workers are prioritized
- If no visa appointment is available when you first check, check back frequently for newly released appointments on the on-line appointment calendar.

Consular Services Availability - Expedites

- Expedite Requests/Emergency Appointments - Once the earliest available appointment is scheduled, request an expedited appointment on-line.
 - briefly outline the reason for emergency travel.
 - the Nonimmigrant Visa Unit reviews the request and responds by email.
- Expedite requests are generally approved only when there is a humanitarian need for travel, such as for critical medical treatment.
- Some posts will also consider urgent business travel
- F-1/J-1 to begin or resume a valid program within 60 days of the start date - when no regular visa appointments are available.
- Expedite request relates only to the date of the visa interview/not visa processing/issuance.

Trump Travel Ban & National Interest Exception (NIE)

- Those with valid F-1 or M-1 (and dependents) visa and if traveling from the UK, Ireland, or the Schengen Area, and have not been physically present in Brazil, Iran, or China within the last 14 days, do not need to seek a national interest exception (NIE) to travel to the United States.
- Certain business travelers, investors, treaty traders, academics, students, and journalists may qualify for national interest exceptions under Presidential Proclamations (PPs) 9993 (Schengen Area) and 9996 (United Kingdom and Ireland).
- Students seeking to apply for new F-1 or M-1 visas will automatically be considered for a national interest exception to travel. J-1 students and exchange visitors must apply for NIE.
- DOS grants national interest exceptions for qualified travelers seeking to enter the U.S. for purposes related to humanitarian travel, public health response, economic recovery, and national security.

Travel Restriction Proclamations & Quarantines

- 14-day quarantine in third country still required for foreign nationals returning from:
 - China
 - Iran
 - Brazil
 - UK
 - Ireland
 - Schengen area
- Mexico or Caribbean is an option but there are many other alternatives.
- F-1 Students traveling from UK, Ireland, Schengen area not required to quarantine as of 7/16.

NIE

- New H-1B visa applicants are generally barred pursuant to EO 10052 until 12/31, except for persons in the U.S. and/or with valid visa on 6/24.
- National Interest Exceptions (NIE) are available for H1B's:
 - Providing healthcare services or in healthcare research
 - Returning to same job for same employer in same visa class
 - Providing services vital to national economic recovery, including critical infrastructure needs
 - Employer would suffer economic hardship
 - If the LCA was obtained before July 2020, the visa applicant must demonstrate the employer's continued need for the foreign national.
 - This criterion is not met if the visa applicant is currently performing or able to perform the essential functions of the H-1B position from outside the United States.
 - The wage rate paid to the H-1B applicant must meaningfully exceeds the prevailing wage rate by at least 15 percent and the applicant's education, training and/or experience demonstrate unusual expertise in the specialty occupation

Injunction

- On October 1, 2020, the U.S. District Court for the Northern District of CA issued a preliminary injunction blocking the enforcement of Proclamation 10052
- Injunction is limited to the plaintiffs in the case only, which includes the National Association of Manufactures (NAM), the Chamber of Commerce of the United States of America, the National Retail Federation, Technet, and Intrax, Inc.
- Any J-1, H-1B, H-2B, or L-1 visa applicant who is either sponsored (as an exchange visitor) by, petitioned by, or whose petitioner is a member of, one of the above named organizations is no longer subject to PP 10052's entry restrictions and can apply for their visas.
- H-1B, H-2B, and L-1 Visa Applicants must be prepared to demonstrate that a U.S. employer/petitioner is a named plaintiff or member of any of the named plaintiff associations.
- Provide evidence directly to the consular officer at the time of visa interview.

Visa Renewal Applications: Common Issues

- Previously Out of Status & Overstays
- Country-Specific Conditions (wars, natural disasters, “brain drain”)
- Nonimmigrants & Residence Abroad
 - The implication of the “residence abroad” requirement is that those nonimmigrant categories cannot take any step toward permanent residence (i.e. marriage to a U.S. citizen; filing adjustment of status), nor declare their intention to apply for PR to a government official, lest they call into question their “residence abroad.”
 - Conversely, starting a permanent residency application, if in a category without the “residence abroad” requirement (i.e. H-1B), has no effect on extensions, entry, or visa issuance
 - Visa applications after change of status (i.e. B-1 to F-1) can also be complex

Visa Revocations

- Visas can be revoked for any reason that may trigger inadmissibility, including an arrest for any reason.
 - electronic equipment searches by CBP more common at U.S. ports of entry.
- If a nonimmigrant is present in the U.S., visa revocation should not effect status.
 - revocation takes effect upon departure from U.S.
- SEVIS termination does NOT result in visa revocation, but a written finding of status violation by USCIS or an Immigration Judge does operate to automatically revoke the visa under INA Section 222(g).

Visa Revocations

- A recent trend has been visa revocations and refusals for Chinese visa holders allegedly associated with the People's Liberation Army or who are suspected of Intellectual property theft.
 - <https://www.state.gov/u-s-limits-the-peoples-liberation-armys-ability-to-use-nonimmigrant-visa-programs-to-illicitly-acquire-u-s-technologies-and-intellectual-property/>
 - May 29, 2020 Presidential proclamation suspended entry into the U.S. of PRC nationals pursuant to an F or J visa to study or conduct research in the U.S., except for a student seeking to pursue undergraduate study, where the individual's academic or research activities are likely to support a PRC entity that implements and supports the Chinese Communist Party's (CCP) "military-civil fusion" strategy.

Visa Revocations

- Arrest or conviction for DUI and related offenses:
 - Immediate nonimmigrant visa revocation where the Department of State learns of the arrest or conviction within the last five years for alcohol- or drug-related DUI
 - When applying for a new visa, applicant is subject to a mandatory medical exam by a panel physician to determine whether drug or alcohol use constitutes a substance-related disorder, rendering them inadmissible to the U.S.
 - Usually required to remain abroad at least one year before eligible for a new visa.

When to Contact an Immigration Attorney?

- Visa denial
- Recent arrest and/or visa revocation
- Prolonged administrative processing
- Non-immigrant visa waiver needed
- Travel Ban Waiver Needed
- Other unusual circumstances

Questions?

Questions?

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